
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1474 **Hearing Date:** April 24, 2018
Author: Hill
Version: April 10, 2018
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Passenger Stage Corporations: Charter-Party Carriers of Passengers:
Impoundment of Vehicles*

HISTORY

Source: Author

Prior Legislation: SB 19 (Hill) Ch. 421, Stats. 2017
AB 1206 (Bocanegra), Ch. 531, Stats. 2017
SB 541, Hill, Ch. 718, Stats. 2015

Support: Greater California Livery Association

Opposition: None known

PURPOSE

The purpose of this bill is to allow the Public Utilities Commission (CPUC) to impound a vehicle owned or operated by a passenger stage corporation or a charter-party carrier for any violation of the Public Utilities Act's requirements, or of any order, decision, rule, regulation, direction, demand, or requirement issued pursuant to those requirements.

Existing law provides the CPUC with regulatory authority over public utilities, including common carriers. (Cal. Pub. Util. Code, § 701.)

Existing law defines "passenger stage corporation" to include every corporation or person engaged as a common carrier, for compensation, in the ownership, control, operation, or management of any passenger stage over any public highway in this state between fixed termini or over a regular route except those, 98 percent or more of whose operations as measured by total route mileage operated, which are exclusively within the limits of a single city or city and county, or whose operations consist solely in the transportation of bona fide pupils attending an institution of learning between their homes and that institution. (Pub. Util. Code, § 226.)

Existing law defines "charter-party carrier of passengers" to mean every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state, and includes any person, corporation, or other entity engaged in the provision of a hired driver service when a rented motor vehicle is being operated by a hired driver. (Pub. Util. Code, § 5360.)

Existing law states that no passenger stage corporation shall operate or cause to be operated any passenger stage over any public highway in this state without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation, with specified exceptions. (Pub. Util. Code, § 1031.)

Existing law states that no charter-party carrier of passengers excepting transit districts, transit authorities or cities owning and operating local transit systems themselves or through wholly owned nonprofit corporations shall engage in transportation services made subject to this chapter without first having obtained from the commission a certificate that public convenience and necessity require the operation, except as specified. (Pub. Util. Code, § 5371.)

Existing law provides that when the executive director of the CPUC determines that any passenger stage corporation, or any officer, director, or agent of any passenger stage corporation, has engaged in, is engaged in, or is about to engage in, any acts or practices in violation of the Public Utilities Act, or any order, decision, rule, regulation, direction, demand, or requirement issued under the act, the executive director may make application to the superior court for an order enjoining those acts or practices or for an order directing compliance. (Pub. Util. Code, § 1044.)

Existing law authorizes the court to grant a permanent or temporary injunction, restraining order, or other order, including, but not limited to, an order allowing vehicles used for subsequent operations subject to the order to be impounded at the carrier's expense and subject to release only by subsequent court order following a petition to the court by the defendant or owner of the vehicle, upon a showing by the executive director of the CPUC that a person or corporation has engaged in or is about to engage in acts or practices in violation of the Public Utilities Act, or any order, decision, rule, regulation, direction, demand, or requirement issued under the act. (*Id.*)

Existing law defines, subject to specified exclusions, "charter-party carrier of passengers" to mean every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state. It includes any person, corporation, or other entity engaged in the provision of a hired driver service when a rented motor vehicle is being operated by a hired driver. (Pub. Util. Code, § 5360.)

Existing law states that it is a misdemeanor for every passenger stage corporation which violates any provisions related to requirements on passenger stage corporations, or aids or abets, or without being present advises or encourages any person or corporation in such violation, is guilty of a misdemeanor punishable by a fine not exceeding \$1,000 or by imprisonment in a county jail for a term not to exceed six months, or by both such fine and imprisonment, or, if a corporation, shall be punished by a fine not to exceed \$1,000. (Pub. Util. Code, §1037.)

Existing law states that it is a misdemeanor for every charter-party carrier of passengers who violates or who fails to comply with, or who procures, aids, or abets any violation by any charter-party carrier of passengers of any provision related to requirements on charter-party carriers, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit or certificate issued to any charter-party carrier of passengers, or who procures, aids, or abets any charter-party carrier of passengers in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit or certificate, punishable by a fine of not less than \$1,000 and not more than \$5,000 or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment. (Pub. Util. Code, § 5411.)

Existing law states that CPUC may charge a fee or to bar, suspend, or revoke authority when operating a charter-party carrier without the proper authority to do so. (Pub. Util. Code, §§ 5387, 5387.5.)

Existing law authorizes a peace officer to impound a bus or limousine of a charter-party carrier for 30 days if the officer determines that specified violations related to a permit or certificate issued by the CPUC or for not having the proper driver's license or passenger vehicle endorsement occurred while the driver was operating the bus or limousine of the charter-party carrier. (Veh. Code, § 14602.9, subd. (b).)

Existing law authorizes a peace officer may impound a bus or limousine belonging to a passenger stage corporation for 30 days if the officer determines that specified violations related to a certificate of public convenience and necessity issued by the CPUC or for not having the proper driver's license occurred while the driver was operating the bus or limousine. (Veh. Code, § 14602.9, subd. (c).)

Existing law requires, within two working days after impoundment, the impounding agency to send notice to the legal owner of the vehicle informing the owner that the vehicle has been impounded and requires the impounding agency to provide information regarding the impoundment of vehicles and the rights of a registered owner to request a hearing. (Veh. Code, § 14602.9, subd. (d).)

Existing law states that the registered and legal owner of a vehicle that is impounded by law enforcement shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage (or impound). (Veh. Code, § 14602.9, subd. (e) and 22852.)

Existing law provides that the impounding agency shall release the vehicle to the registered owner or the legal owner prior to the end of the impoundment period in certain specified circumstances. (Veh. Code, § 14602.9, subs. (f), (h).)

This bill authorizes the CPUC to impound a vehicle owned or operated by a charter-party carrier, and starting July 1, 2019 a vehicle owned or operated by a passenger stage corporation, if the CPUC determines that the passenger stage corporation, or or any officer, director, or agent, is engaged in acts or practices in violation of the Public Utilities Act, or any order, decision, rule, regulation, direction, demand, or requirement issued under the act.

This bill states that the CPUC shall not exercise its power to impound until it amends its existing general orders, resolutions, or decisions as necessary to provide for a prompt and fair administrative review of the decision to impound a vehicle and shall consider adopting existing impoundment protections and rules as outlined in Vehicle Code section 14602.9.

This bill states that the CPUC shall not exercise this authority absent the presence of a California Highway Patrol (CHP) officer or an officer from a law enforcement agency in the city, county, or city and county where the vehicle is located, unless impoundment occurs on airport property.

This bill provides that the registered owner, and not the legal owner, shall remain responsible for any towing and storage charges related to the impoundment, any administrative charges authorized pursuant to the provisions in this bill, and any parking fines, penalties, and administrative fees incurred by the registered owner.

COMMENTS

1. Need for this Bill

According to the author of this bill:

In response to a request by the Joint Legislative Budget Committee, the State Auditor developed and released a report in June 2014 concerning the CPUC's [Transportation Enforcement Branch] TEB's efforts to regulate passenger carriers, as well as its use of the fees it collects from these carriers. The report concluded that the "branch does not adequately ensure that passenger carriers comply with state law." The Auditor's report cited 17 areas within TEB's efforts that are lacking and merit improvement, including lack of staff training, a lack of procedures for processing complaints, failure to complete investigations and issue citations in a timely manner, and many others. The Auditor's report also provided a series of recommendations to address the many failures and shortcomings and to improve the TEB's efforts to ensure carrier and public safety. SB 541 (Hill, Chapter 718, Statutes of 2015) codified many of the recommendations from that Auditor Report, and included a provision granting peace officers impoundment authority for transportation services under CPUC jurisdiction.

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The lack of PUC impoundment authority was noted in a 2017 Crowe Horwath audit; an audit called for under SB 541.4 [Audit attached to email.] On pg. 3-8 of the audit it notes: "Unlicensed 'rogue' carriers, who usually are a greater threat to public safety than licensed carriers, are not enforced against as effectively given the lack of targeted tools and the longer investigation time per case. TEB does not have impound authority or the ability to follow up on fines issued to unlicensed carriers. Carriers cited for operating without a license can easily close the business and re-open under another name, unbeknownst to TEB Enforcement or Licensing staff. The current tracking systems do not have the ability to identify repeat violators. A survey respondent stated that "when it comes to unlicensed carriers, we do not have much power." Enforcement staff do occasionally participate in sting operations at airports with other agencies, but do not regularly conduct stings at other events (such as major award programs or sporting events) that attract unlicensed carriers."

The audit then recommends TEB gain impound authority in order to significantly improve its ability to regulate carriers. Last year, SB 19 (Hill, Chapter 421, Statutes of 2017) adopted many of the reforms mentioned in the Crowe Horwath audit, principally the transfer of a number of CPUC transportation oversight duties to other agencies. An early version of SB 195 included a provision permitting the CPUC to impound vehicles; however that provision was removed from the final bill.

2. Background on Passenger Stage Corporations and Charter-Party Carriers

A passenger stage corporation generally charges individual fares and provides scheduled service, over fixed routes, between fixed points, although the definition does not include regularly scheduled bus service operated by a publicly owned transit system. Another type of passenger stage corporation provides on-call service, for example, door-to-door airport shuttle service where all transportation begins or ends at a single terminus, such as an airport.

Charter-party carriers are generally chartered by a person or group called the “chartering party”. Usually, the chartering party is also taking the transportation, but the chartering party may also arrange the transportation on behalf of another person or group, such as an employee or client, or parents chartering a limousine for a minor son or daughter’s prom night. Usually, the chartering party has control over the transportation, specifically, when and where the trip originates and ends, and the itinerary in between. The transportation provided by a charter-party carrier must be arranged beforehand. Unlike passenger stage corporations, charter-party carriers may not charge individual fares. Instead, charter-party carriers must charge fares based on vehicle mileage, or time of use, or a combination of the two. Charter-party carriers do not include taxis which are licensed and regulated by cities and counties.

Neither of these types of transportation providers need to be a corporation; an individual or other type of company or partnership can apply for passenger stage corporation or charter-party carrier authority. (CPUC, Basic Information for Passenger Carriers and Applicants (Nov. 2014) <http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Passenger_Carriers_and_Movers/BasicInformationforPassengerCarriersandApplicants_Nov2014_11172014lct.pdf> [as of Apr. 16, 2018].)

3. Legislative History

SB 19 (Hill), Chapter 421, Statutes of 2017 made various changes to the Public Utilities Act. When the bill was being considered, the bill contained language authorizing the CPUC to impound a vehicle owned or operated by a charter-party carrier or passenger stage corporation. This language was amended out of the bill before the bill was signed into law. The committee has been informed that the impound language was removed due to concerns about feasibility of the impound.

This bill contains similar language to the impound language that was amended out of SB 19, but this bill adds the following components: (1) the CPUC shall not exercise this authority absent the presence of a CHP officer or other appropriate law enforcement officer unless occurring at an airport; (2) the CPUC shall consider adopting existing impoundment protections and rules as outlined in Vehicle Code section 14602.9; and (3) specifies that the registered owner, not the legal owner, shall remain responsible for any towing and storage charges related to the impoundment, any administrative charges authorized pursuant to the provisions in this bill, and any parking fines, penalties, and administrative fees incurred by the registered owner.

4. State Auditor Report

In 2014, the California State Auditor conducted an audit of the CPUC’s transportation enforcement branch’s efforts to regulate passenger carriers:

Through the efforts of the [transportation enforcement] branch the commission is responsible for ensuring that passenger carriers—for-hire limousines, for example—

comply with requirements to have branch-issued permits, which include regular inspections by the California Highway Patrol, applicable insurance, and participation in driver safety programs. . . .

This report concludes that the branch does not adequately ensure that passenger carriers comply with state law. Specifically, we found that the branch has not established formal policies and procedures for staff to follow when addressing complaints against passenger carriers, and it does not ensure that staff resolve these complaints in a timely or adequate manner. Without formal guidance, investigators have not always ensured that passenger carriers comply with critical safety requirements. In addition, when the branch's investigators have issued citations to passenger carriers, the citations have been for amounts much lower than state law allows.

(California Bureau of State Audits, *California Public Utilities Commission: It Fails to Adequately Ensure Consumers' Transportation Safety and Does Not Appropriately Collect and Spend Fees From Passenger Carriers*, Report 2013-130 (Jun. 2014) p. 47.) In regards to impoundment of vehicles, the report noted:

State law allows peace officers to impound vehicles when making arrests of passenger carriers operating illegally. However, this authority to impound vehicles does not clearly extend to the branch's investigators, who can—under state law—perform some peace officer activities. We believe the commission should explore revisions of state law to allow its investigators to impound vehicles when illegal carriers refuse to comply with commission orders or refuse to pay penalties for operating illegally.

Impounding vehicles and intercepting state payments to carriers could be effective tools to encourage passenger carriers to comply with state law and pay their outstanding fines. When we discussed this possibility with a branch supervisor, he agreed that these actions could be useful tools but said there are practical barriers to implementing these ideas. Specifically, the branch does not have Social Security numbers for all carriers (footnote omitted) and does not have space to store impounded vehicles. These concerns need to be addressed as the commission examines the feasibility of using these approaches to increase carrier compliance.

(*Id.* at p. 27-28.) The audit recommended that the CPUC examine and formally report on the feasibility of impounding the vehicles of passenger carriers that refuse to comply with commission orders or that refuse to pay citation penalties. (*Id.* at p. 47)

In 2017, pursuant to a mandate in SB 541 (Hill), Chapter 718, Statutes of 2015, Crowe Horwath L.L.P. conducted an independent study evaluating the CPUC's regulation of passenger and property transportation. Of relevance to this bill, the report stated that impound authority would significantly improve the transportation enforcement branch of the CPUC's ability to regulate carriers and suggested adding "Investigators of the [Consumer Protection and Enforcement Division] CPED" to the Public Utilities Code sections 5411.5 and 1045, and to Vehicle code section 14602.9. (*Transportation Enforcement Branch Management and Operations Review – Report and Recommendations*, Crowe Horwath (Jan. 2017)

<http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Organizational/Divisions/Consumer_Services_and_Information_Division/02-08-17CPUCTEBreport-revisedcoverletter.pdf> [as of Apr. 17, 2018].)

Instead of adding CPED investigators to Vehicle code section 14602.9, or Public Utilities Code section 5411.5 (authorizes peace officers to impound illegally operated charter-party carrier) or section 1045 (authorizes CPUC to grant or deny an application for a new certificate to operate as a passenger stage corporation whenever it appears that a prior certificate of the applicant has been canceled or revoked for specified activities), this bill provides broad authority for the CPUC to impound vehicles and states that the CPUC shall consider adopting the protections and procedures required under Vehicle Code section 14602.9.

5. Impoundment: Constitutional Considerations

Under existing law, the executive director of the CPUC may seek to impound a vehicle owned or operated by a passenger stage corporation when the executive director determines that the passenger stage corporation, or any officer, director, or agent of the passenger stage corporation, has engaged in, is engaged in, or is about to engage in, any acts or practices in violation of the applicable requirements on passenger stage corporations, or any order, decision, rule, regulation, direction, demand, or requirement issued.

This bill removes the court's involvement in ordering a vehicle to be impounded and instead places this authority with the CPUC. The standard for impoundment would be if the CPUC determines, through its enforcement, consumer protection or legal staff, that a passenger stage corporation, or any officer, director, or agent of the passenger stage corporation, is engaged in any acts or practices in violation of the Public Utilities Act, or any order, decision, rule, regulation, direction, demand, or requirement issued under the act. The bill adds similar authority for CPUC to impound a vehicle owned or operated by a charter-party carrier. This bill specifies that the CPUC shall consider adding in the procedures and protections provided in existing law that authorizes a peace officer to impound a vehicle owned or operated by a passenger stage corporation or a charter-party carrier for failing to have a proper permit or certificate issued by the CPUC. This bill prohibits the CPUC from exercising this authority absent the presence of CHP officer or other law enforcement agency in the city, county, or city and county where the vehicle is located, unless impoundment occurs on airport property. (Note: According to the author, TEB already partners with airports, primarily LAX, to impound rouge vehicles.)

a) Due Process

The Due Process clause contained in article I, section 7, subdivision (a) of the California Constitution provides: "A person may not be deprived of life, liberty, or property without due process of law." The federal Due Process clause, which is contained in section 1 of the Fourteenth Amendment to the United States Constitution, provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

Due process generally requires that a person receive notice of and an opportunity for a hearing before his property is seized. (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333.) Due process does not necessarily require a judicial hearing; an administrative hearing may be sufficient depending on the circumstances. (*Alviso v. Sonoma County Sheriff's Dept.* (2010) 186 Cal.App.4th 198, 211.)

In *Alviso*, defendant challenged the constitutionality of Vehicle Code section 14602.6 which authorizes a peace officer to impound a vehicle for 30 days when a driver has been found to be driving on a suspended license. The court analyzed defendant's due process challenge by considering the following: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through

the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. (*Ibid*; citing *Matthews v. Elridge, supra*, 424 U.S. at pp. 334-335.) The court, after weighing all of the factors found that the hearing procedure required in Vehicle Code section 22852 “adequately reconciles the competing interests of the parties: the private interest in avoiding the cost and disruption entailed by impoundment of one's automobile; the relatively low risk of erroneous deprivation given the straightforward nature of most of the determinant factors; and the governmental interest in efficiently and effectively keeping the most dangerous drivers off the road.” (*Id.* at p. 214.) Thus the court concluded that the impound scheme did not violate due process.

This bill authorizes the CPUC to impound vehicles owned or operated by a passenger stage corporation or a charter-party carrier upon a determination that there has been a violation of the Public Utilities Act's requirements, or of any order, decision, rule, regulation, direction, demand, or requirement issued pursuant to those requirements. The bill requires the CPUC to amend its existing general orders, resolutions, or decisions as necessary to provide for a prompt and fair administrative review of its decision to impound a vehicle. The bill states that the CPUC shall consider adopting existing impoundment protections and rules as outlined in Vehicle Code section 14602.9, which among other things requires a hearing pursuant to Vehicle Code section 22852 and the opportunity for legal owners and have their vehicles returned to them prior to the end of the 30 day impound.

Vehicle Code section 14609.2 provides clear violations that would authorize a law enforcement officer to impound a vehicle owned or operated by a passenger stage corporation or a charter-party carrier. This bill provides broader authority to the CPUC to impound a vehicle based on a violation of any of the Public Utilities Act's requirements, or of any order, decision, rule, regulation, direction, demand, or requirement issued pursuant to those requirements. While this bill does direct the CPUC to provide for a prompt and fair administrative review of the decision to impound, it is unclear whether, on balance of all of the factors, this is enough to provide adequate due process.

b) Fourth Amendment Seizure

The Fourth Amendment to the United States Constitution protects the people and their effects “against unreasonable searches and seizures.” Article I, section 13 of the California Constitution also protects the right of the people to be secure against unreasonable searches and seizures.

Recently, in *Brewster v. Beck* (9th Cir. 2017) 859 F.3d 1194, the Court of Appeals considered a Fourth Amendment challenge to Vehicle Code section 14602.6, the same section that was at issue in *Alviso*. Brewster loaned her vehicle to a driver with a suspended license. Los Angeles Police Department (LAPD) officers stopped the driver, discovered the suspension, and impounded the vehicle, relying on Vehicle Code section 14602.6. Three days later, Brewster appeared at a hearing before the LAPD with proof that she was the registered owner of the vehicle and her valid California driver's license. Brewster offered to pay all towing and storage fees that had accrued, but the LAPD refused to release the vehicle before the 30-day holding period had lapsed. Brewster filed

suit under 42 U.S.C. §1983, arguing the 30-day impound was a warrantless seizure that violated the Fourth Amendment.

The parties agreed that the initial seizure was authorized under community caretaking exception to the Fourth Amendment, which authorizes impound of vehicles that jeopardize public safety and the efficient movement of vehicular traffic. (*Brewster v. Beck, supra*, 859 F.3d at p. 1196, citing *United States v. Cervantes* (9th Cir. 2012) 703 F.3d 1135, 1141.) However, that the seizure of the vehicle was lawful at the outset was not determinative. A seizure is justified under the Fourth Amendment only to the extent that the government's justification holds force. Thereafter, the government must cease the seizure or secure a new justification. Here, although the initial seizure had a legitimate public safety purpose, that justification vanished when Brewster showed up with proof of ownership and a valid driver's license. Because the city failed to provide any justification for the continued retention of her car, the district court erred in granting its motion to dismiss. (*Id.* at p. 1197.)

This bill authorizes a vehicle owned or operated by a passenger stage coach or charter-party carrier to be impounded upon a determination that the entity has violated any of the Public Utilities Act's requirements, or of any order, decision, rule, regulation, direction, demand, or requirement issued pursuant to those requirements. The purpose of this bill is presumably to enforce its laws and rules against common carriers who pose a safety threat by not having the proper certificates or adequately maintaining their vehicles, and to provide an incentive to those entities that have been fined for certain violations and fail to pay those fines. That purpose may be justified under the caretaker exception to the Fourth Amendment because arguably some of those violations pose a threat to public safety, however, any prolonged impoundment would require further justification. This bill is silent on how long a vehicle may be impounded and what circumstances would authorize an owner to retrieve the vehicle. The bill states that the CPUC shall consider adopting the procedures in Vehicle code section 14609.2 which authorizes a 30 day impound, with specified circumstances that would allow an owner to retrieve the vehicle earlier than the 30 days. Since CPUC is not required to adopt those procedures, the authority to impound provided by this bill may violate the Fourth Amendment.

6. Argument in Support

The Greater California Livery Association writes in support of this bill:

Currently, the California Public Utilities Commission lacks effective enforcement efforts and effective enforcement tools. Without efforts to safely regulate our industry, legal and illegal operators understand that current rules, operating requirements, and any possible violate fines are meaningless. The lack of enforcement by the CPUC and the lack of effective enforcement tools jeopardizes the safety of the public and diminishes the viability of the charter party industry. The passage of Senate Bill 1474 will go a long way to enhance enforcement of California law and regulation, penalize non-compliance operators and provide incentive to comply with the laws and standards governing our industry.